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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ELIZABETH HAMMOND,

Plaintiff and Respondent,

v.

RICHARD CARNESALE,

Defendant and Appellant.

G033751

(Super. Ct. No. 03V001844)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Franz E. Miller, Judge. Affirmed.

Richard E. Carnesale, in pro per., for Defendant and Appellant.

Elizabeth A. Hammond, in pro per., for Plaintiff and Respondent.

\* \* \*

During the pendency of this appeal from a restraining order based on a finding that appellant had been stalking respondent, appellant Richard Carnesale filed an abandonment of the appeal. However, we do not accept the unilateral abandonment because it would deprive respondent Elizabeth Hammond of her entitlement to costs on appeal. (See *DeGarmo v. Goldman* (1942) 19 Cal.2d 755, 768 [“An appellant may not dismiss his appeal as a matter of right; whether he will be permitted to do so is within the discretion of the court.”].)

However, in light of the abandonment, we will not comment extensively on the merits of Carnesale's appeal, except to say that (1) the argument that Judge Miller was biased in the process of the deciding the case is unfounded, and (2) Family Code section 6320 is not overbroad at least as applied to this case, because the statute has been construed by the courts to only encompass activity that is not a "constitutionally protected activity" or is not otherwise legitimate. (See *Grant v. Clampitt* (1997) 56 Cal.App.4th 586, 591.)

The order is affirmed. Hammond will recover her costs on appeal.

SILLS, P.J.

WE CONCUR:

O'LEARY, J.

MOORE, J.